FILE COPY

FILED
OCT 19 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 24

MARINE HARBOR PROPERTIES, INC.,
Petitioner,

against

MANUFACTURERS TRUST COMPANY (successor by merger to The Mortgage Corporation of New York), as trustee for the benefit of certificate holders in mortgage guaranteed by Bond and Mortgage Guarantee Company, Guarantee #181,568,
Respondent,

MAURICE RUBINGER, trustee of Marine Harbor Properties, Inc.,

SAMUEL SILVERMAN, additional trustee of Marine Harbor Properties, Inc.,

MORTIMER RUBENSTEIN, foreclosure-receiver,

and

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION OF CERTAIN CHARITABLE INSTITUTIONS FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*, AND BRIEF OF *AMICI CURIAE*

MARTIN A. SCHENCK,
Counsel for The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America

SAMUEL KRAMER,
Counsel for Society for Experimental Biology and Medicine—College of The City of New York

CARL J. AUSTRIAN,
Counsel for The Mount Sinai Hospital

CLARENCE F. CORNER,
ROY M. HART,
Counsel for Board of National Missions of the Presbyterian Church in the United States of America

CLARENCE F. CORNER,
Counsel for Brooklyn Thoracic Hospital and Brooklyn Public Library

CLARENCE F. CORNER,
SIDNEY F. STRONGIN,
Counsel for Brooklyn Hebrew Home and Hospital for the Aged

CLARENCE F. CORNER,
J. HUNTER LACK,
Counsel for House of St. Giles the Cripple

GEORGE J. GILLESPIE,
Counsel for Trustees of St. Patricks Cathedral in the City of New York and Catholic Missionary Union

INDEX

	PAGE
Motion for Leave to File Brief as *Amici Curiae*	1
Brief as *Amici Curiae*	3
Preliminary Statement	4
Argument	5
Conclusion	7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 24

MARINE HARBOR PROPERTIES, INC.,
Petitioner,

against

MANUFACTURERS TRUST COMPANY (successor by merger to The Mortgage Corporation of New York), as trustee for the benefit of certificate holders in mortgage guaranteed by Bond and Mortgage Guarantee Company, Guarantee #181,568,
Respondent,

MAURICE RUBINGER, trustee of Marine Harbor Properties, Inc.,

SAMUEL SILVERMAN, additional trustee of Marine Harbor Properties, Inc.,

MORTIMER RUBENSTEIN, foreclosure-receiver,

and

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

May it Please the Court:

The undersigned, as counsel for the charitable institutions listed below, respectfully move this Honorable Court for leave to file the accompanying brief in this case as *amici curiae.*

MARTIN A. SCHENCK,
Counsel for The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America

SAMUEL KRAMER,
Counsel for Society for Experimental Biology and Medicine—College of The City of New York

CARL J. AUSTRIAN,
Counsel for The Mount Sinai Hospital

CLARENCE F. CORNER,
ROY M. HART,
Counsel for Board of National Missions of the Presbyterian Church in the United States of America

CLARENCE F. CORNER,
Counsel for Brooklyn Thoracic Hospital and Brooklyn Public Library

CLARENCE F. CORNER,
SIDNEY F. STRONGIN,
Counsel for Brooklyn Hebrew Home and Hospital for the Aged

CLARENCE F. CORNER,
J. HUNTER LACK,
Counsel for House of St. Giles the Cripple

GEORGE J. GILLESPIE,
Counsel for Trustees of St. Patricks Cathedral in the City of New York and Catholic Missionary Union

AS *AMICI CURIAE.*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 24

MARINE HARBOR PROPERTIES, INC.,
Petitioner,

against

MANUFACTURERS TRUST COMPANY (successor by merger to The Mortgage Corporation of New York), as trustee for the benefit of certificate holders in mortgage guaranteed by Bond and Mortgage Guarantee Company, Guarantee #181,568,
Respondent,

MAURICE RUBINGER, trustee of Marine Harbor Properties, Inc.,

SAMUEL SILVERMAN, additional trustee of Marine Harbor Properties, Inc.,

MORTIMER RUBENSTEIN, foreclosure-receiver,

and

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF CERTAIN CHARITABLE INSTITUTIONS, *AMICI CURIAE*

PRELIMINARY STATEMENT

This brief is submitted on behalf of *The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, Society for Experimental Biology and Medicine—College of the City of New York, The Mount Sinai Hospital, Board of National Missions of the Presbyterian Church in the United States of America, Brooklyn Thoracic Hospital, Brooklyn Public Library, Brooklyn Hebrew Home and Hospital for the Aged, House of St. Giles the Cripple, Trustees of St. Patricks Cathedral in the City of New York and Catholic Missionary Union*, as *amici curiae*, in opposition to the contention of petitioner and of the Securities and Exchange Commission that the certificated mortgage involved in the above entitled action, which is typical of thousands of certificated mortgages reorganized in permanent liquidating trusts in the New York State courts, should be made the subject of further reorganization in the federal court through the instrumentality of a debtor's petition under Chapter X of the Bankruptcy Act.

This brief is filed with the written consent of the petitioner and the respondent. The Securities and Exchange Commission, which intervened in the proceedings upon its own motion pursuant to Section 208 of Chapter X, has refused to grant consent.

These *amici curiae* are charitable institutions operated on a non-profit basis for the benefit of the public welfare. These institutions have invested in and presently hold a substantial amount of guaranteed first mortgage certificates similar to the type involved in this action. These mortgages (hereinafter sometimes referred to as "Schackno mortgages") have been reorganized in the

New York State Supreme Court under the Schackno Act (New York Laws of 1933, c. 745) or the Mortgage Commission Act (New York Laws of 1935, c. 19) and are now being liquidated by permanent trustees appointed in such reorganizations. This case has been characterized by the Securities and Exchange Commission as a test case (*Memorandum of Securities and Exchange Commission in support of application for certiorari*, pp. 12-13) to "determine whether the federal procedure provided by Chapter X shall be available for * * * further reorganization" of Schackno mortgages. Since these charitable institutions are certificate holders in many of these Schackno mortgages, their interests may well be directly affected by the decision in this case.

ARGUMENT

The facts in this action are set forth in detail in the briefs of the respondent Manufacturers Trust Company and of The People of the State of New York. We are in complete accord with the arguments in those briefs and believe that the Schackno trust proceedings pending in the state court will best subserve the interests of certificate holders and that further reorganization in the federal court would only result in additional unnecessary delay and expense.

In filing this brief, we wish to emphasize the importance of this litigation to Schackno mortgage certificate holders. More than $700,000,000 in principal amount of certificated mortgages have been reorganized in the New York Supreme Court during the past nine years (*Respondent's Brief*, pp. 17-18). Most of these mortgages are now being liquidated in the state courts by qualified trustees of considerable experience under the continuing

supervision of judges especially assigned to this work, who are aided by experts as exemplified, in the Second Judicial Department, by the Bureau of Trust Supervision. These judges and their advisory personnel have had a long experience with the reorganization of these mortgages and are fully familiar with all phases of the problem. The complete history of each mortgaged property is available to them for reference in determining the fairness and feasibility of any plan of reorganization. The declaration of trust under which Schackno trustees operate was developed through the combined efforts of New York State officials and attorneys specializing in this field. All these factors have resulted in the success of the New York State procedure for the reorganization and continuing liquidation of these mortgages.

At the present time most of the issues are paying interest regularly and also amortizing the principal (see *Report of Bureau of Trust Supervision*, p. 19). The income from these securities is of vital importance to these charitable institutions. A new reorganization in the federal courts would merely mean an expense to the trust estate with a consequent reduction in income to certificate holders for which there would be no compensating benefits. Any procedure which involves delay and consequent stoppage of income would be a serious disadvantage to these institutions, which are partially dependent upon income from investments for the continuance of their charitable activities. The instant case well illustrates the interference with continuity of income which results from a wilful default by a mortgagor (debtor) and subsequent litigation arising from its efforts to initiate a Chapter X proceeding. If foreclosure were permitted to take its normal course, the period of interference with the certifi-

cate holders' income would undoubtedly be held to a minimum.

We respectfully submit that the permanent liquidating trusts set up by the New York Supreme Court are presently operating in a fair, economical and completely satisfactory manner and that to disregard ten years of effort on the part of the New York State officials and courts and permit the initiating of new proceedings in the federal court would be unwise, unnecessary, expensive, inefficient and detrimental to the best interests of certificate holders.

CONCLUSION

The order of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

MARTIN A. SCHENCK,
Counsel for The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America

SAMUEL KRAMER,
Counsel for Society for Experimental Biology and Medicine—College of The City of New York

CARL J. AUSTRIAN,
Counsel for The Mount Sinai Hospital

CLARENCE F. CORNER,
ROY M. HART,
Counsel for Board of National Missions of the Presbyterian Church in the United States of America

CLARENCE F. CORNER,
Counsel for Brooklyn Thoracic Hospital and Brooklyn Public Library

CLARENCE F. CORNER,
SIDNEY F. STRONGIN,
Counsel for Brooklyn Hebrew Home and Hospital for the Aged

CLARENCE F. CORNER,
J. HUNTER LACK,
Counsel for House of St. Giles the Cripple

GEORGE J. GILLESPIE,
Counsel for Trustees of St. Patricks Cathedral in the City of New York and Catholic Missionary Union

AS *AMICI CURIAE.*